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August 23, 2023

Scott Elmore,
PRA Clearance Officer
U.S. Immigration and Customs Enforcement
Department of Homeland Security

Re: Comment in Response to the DHS/ICE Notice of Revision of a Currently Approved Collection: Suspicious/ Criminal Activity Tip Reporting; OMB Control Number 1653–0049, Document number – 2023-15984

Submitted via Regulations.gov

Dear Officer Elmore,

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC provides technical assistance on immigration matters through our webinars and our Attorney of the Day service, in which we work with advocates on their specific cases and questions. Through this work, we are able to assess trends in the immigration enforcement field and, as such, we urge the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) to discontinue the use of anonymous tip reporting using forms like the one proposed here.

The proposed tip form will lead to the exploitation of vulnerable people and the infringement on an individual’s due process rights. This form will be misused and cause harm, especially given the dynamics of domestic violence and other forms of violence faced by immigrant communities, including hate violence against Black communities and other communities of color.¹ The reporting form can easily be abused by individuals motivated by harmful bias and white supremacist ideology to target communities of color and do so with impunity. The reporting form promotes destructive narratives that falsely associate immigration status with criminality. As such, ICE must abandon its efforts to collect anonymous tips from individuals

¹ CNN, *Hate crime reports in US surge to the highest level in 12 years*, FBI says, (October 26, 2021), <https://www.cnn.com/2021/08/30/us/fbi-report-hate-crimes-rose-2020/index.html> (News article cites to the FBI report which found individuals targeted due to “their race, ethnicity or ancestry had the highest increase between 2019 and 2020, with 8,052 single-bias incidents in 2020 compared to 3,954 the previous year.”).



through this form and ensure that no law enforcement action is taken based on this type of unreliable information.

I. The proposed tip form violates confidentiality laws designed to protect survivors of domestic violence, sexual assault, human trafficking, and other forms of violence.

The proposed form purports to be a vehicle for the public to report violations of a number of crimes that are within DHS's purview to address. However, the only violation for which DHS is requesting more information, including individual receipt numbers and A numbers, is marriage and benefit fraud. Providing the opportunity to give additional details for this violation and not others – aside from the general information to be provided for all complaints in Section III of the form – implies that immigration benefit and marriage fraud is more of a focus for reporting than other potential violations. As such, it is more likely that immigrants applying for benefits will be disproportionately targeted by users of this form. The lack of vetting procedures and transparency around the reported information will lead to unreliable information sharing that could have disastrous consequences on survivors of domestic violence and communities that have been historically targeted for enforcement actions.

Effect on survivors of domestic violence. The proposed form empowers perpetrators of domestic violence, sexual assault, human trafficking, and other forms of violence to submit anonymous tips to further harass their victims. Even without this prioritization, the form creates an opportunity for perpetrators to further target and abuse survivors. Immigrant survivors of domestic violence, sexual assault, human trafficking, and other forms of violence are often threatened based on their immigration status. Abusers frequently threaten that if survivors attempt to contact law enforcement, they will either be arrested due to lack of lawful immigration status or that the abuser will contact law enforcement to have survivors deported. According to the National Domestic Violence Hotline's annual report for 2020, 6,689 individuals who called the Hotline in 2020 raised concerns related to immigration status.²

Recognizing the established history of perpetrators using law enforcement and legal systems against survivors, Congress created special immigration protections in the Violence Against Women Act (VAWA) for survivors of domestic violence, sexual assault, human trafficking, and other forms of violence to allow survivors to seek protection without fear of deportation. VAWA also created confidentiality protections that prohibit the government from making adverse determinations based on information solely provided by a perpetrator or a member of a perpetrator's household or family member.³ These protections, codified at 8 USC § 1367, are "designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims."⁴ Recently, in recognition of the importance of the confidentiality protections afforded applicants under § 1367, USCIS provided more guidance on the safeguarding of mailing and physical addresses for survivors of domestic violence, sexual assault, human trafficking and other forms of violence.⁵ These protections are in place for, but not limited to, applicants for immigration relief under VAWA, applicants for T nonimmigrant status (T Visas), and petitioners for U nonimmigrant status (U visas) and are available regardless of whether an application for immigration relief is pending with U.S. Citizenship and Immigration Services (USCIS).⁶ DHS' own guidance instructs:

² National Domestic Violence Hotline. 2020 Impact Report, available at https://www.thehotline.org/wp-content/uploads/media/2021/06/Hotline-EOY-Impact-Report-2020_FINAL.pdf

³ See 8 USC 1367

⁴ *Id.*; See also, *Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402* H.R. Rep. No. 109-233, at 120 (2005), available at <https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf>.

⁵ USCIS, *Policy Alert: Safe Addresses and Special Procedures for Persons Protected by 8 U.S.C. 1367*, April 11, 2023, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230411-SafeAddress.pdf>.

⁶ Department of Homeland Security, *Implementation of Section 1367 Information Provisions*, DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., available at https://www.dhs.gov/sites/default/files/publications/mgmt/community-and-social-services/mgmt-dir_002-02-implementation-section-1367-info-provisions_revision-00-1.pdf.

There are a number of ways DHS employees might receive “tips” from an abuser or an abuser’s family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented or providing information to USCIS rebutting the basis for the victim’s application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, DHS employees treat the information as inherently suspect.

The proposed tip form will create an avenue for abusers to further harass, harm, and intimidate their victims who are attempting to apply for survivor-based relief or are otherwise protected by 8 USC § 1367. Abusers can use the tip form to file false reports that could lead to law enforcement investigations against immigrant survivors, which can have disastrous consequences. Additionally, given that the tip form is anonymous, it is impossible for DHS to determine if the adverse information collected is connected to a survivor of domestic violence, sexual assault, human trafficking, and other forms of violence or an individual who has been targeted for harassment by a landlord or employer.

Effect on historically marginalized communities. Outside of the survivor context, the anonymous reporting form will further harm already-marginalized communities. According to the Department of Justice, almost 62% of the victims of hate crimes perpetrated in 2020 were targeted due to their race, nationality, or ancestry.⁷ Another 20% were targeted based on their religion.⁸ Muslim, Arab, Iranian, Middle Eastern, and South Asian communities have faced targeted harassment and violence at alarming rates, particularly in the last few years, as have Black communities and communities of color and immigrant communities. Reports from 2018 from the Federal Bureau of Investigations (FBI) show that Muslim, Arab, Iranian, Middle Eastern, and South Asian Americans have faced heightened levels of harassment and violence, and these numbers have been severely underreported by the FBI’s own admission.⁹ Similarly, the FBI has reported that hate crimes against Hispanics and Latino communities have risen nationally.¹⁰ These incidents have historically been underreported due to an increased fear of reporting racially motivated crimes to law enforcement.¹¹

The ability to file tips anonymously will empower those with racial or religious animus to make false reports to victimize individuals or communities that are already experiencing higher levels of harassment and hate crimes. It will also empower abusive employers and landlords to retaliate against immigrant workers and tenants. These reports could be unsubstantiated or knowingly false but could lead to law enforcement involvement and direct harm to these communities including severe immigration consequences.

II. The proposed tip form encourages the filing of false information that will violate the due process rights of those accused.

⁷ Federal Bureau of Investigations Uniform Crime Reporting Program 2020 Hate Crimes Statistics, available at <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-updated-2020-hate-crime-statistics>.

⁸ *Id.*

⁹ John Eligon, *Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports*, New York Times, (November 13, 2018), available at <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>.

¹⁰ Brendan Campbell, Angel Mendoza and Tessa Diestel, *Rising hate drives Latinos and immigrants into silence*, News21 (August 22, 2018), available at <https://www.philly.com/philly/living/rising-hate-drives-latinos-and-immigrants-into-silence-20180822.html>.

¹¹ See Arab American Institute, *Hate Crimes Continue to Surge in America*, (November 13, 2018), available at <http://www.aaiusa.org/hate-crimes-continue-to-surge-in-america> (summarizing FBI 2017 statistics). See also Theresa Waldrop and Paul Murphy, *Hate Crime Charges Are Possible For El Paso Shooting Suspect*, (August 4, 2019), available at <https://www.cnn.com/2019/08/03/us/el-paso-shooting-possible-hate-crime/index.html>

No accountability for “tip” provider. The proposed form invites the public to submit information about “Suspected Violations” and asks a reporter to include specific details about an alleged violator, including “places of birth, [and] countries of citizenship.” However, the reporter is not required to disclose any of their identifying information or even their location, and the form allows for reports from outside the United States. Although there is a warning against “knowingly providing false information,” this warning is placed at the end of the form where it is de-emphasized and can easily be overlooked.¹² Furthermore, the warning against providing false information lacks any weight, as the form does not contain a mechanism for accountability. Therefore, an individual could easily and repeatedly submit anonymous “tips” that are frivolous without ever being held responsible for their misconduct.

Financial incentive for providing “tip.” Significantly, the form references a potential financial benefit for providing tips in the introductory paragraphs of the form. Creating a financial incentive for filing tips only increases the likelihood that this form will be misused, particularly when there is no accountability for false information.

The lack of accountability also invites individuals with a bias or harmful intent to use the reporting form to submit unsubstantiated claims as a means to threaten and intimidate individuals. As mentioned in the previous section, individuals can use the tip form to threaten a survivor of domestic violence or other forms of violence, intimidate a worker who is being exploited by an unscrupulous employer, victimize an individual on the basis of racial or religious animus or target political activists.¹³ Although the current administration has issued a “Victim Centered Approach”¹⁴ directive, a “Worksite Enforcement”¹⁵ memo to protect survivors of crime and employees, and developed a deferred action program to protect workers reporting labor violations,¹⁶ the tip form provides bad actors an opportunity to circumvent these protections. The form also contains troubling language that seems to suggest and assume culpability. The reporting form includes language such as “violator information” and “criminal activity,” without including important qualifying language such as “alleged” that signals objectivity. This language further endorses the false and dangerous narrative that immigrants are more inclined to commit crimes.

Overly broad and legally complex terms. The categories of suspected criminal activity included in the form are overly broad and assume the reporter would have knowledge about complicated legal issues, such as marriage fraud. The form contains no guidance or examples about what would constitute a violation in each category, which could lead to erroneous reporting. The legal definition of marriage fraud is complex. Government employees specifically trained in immigration law and tasked with identifying fraud cases are best equipped to make these legal determinations, not the public. The form also lists “gang activity” as a suspected violation, and this broad category can be used to unfairly criminalize individuals, especially people of color. Unsubstantiated gang allegations or gang affiliations can have devastating consequences on an individual’s immigration case.¹⁷ Additionally, once a label is placed upon an individual, it can be challenging to remove this label, even if it is false, especially if the individual is unaware of an allegation and cannot refute any baseless claims. An unfounded and anonymous tip could have far-

¹² Although the warning against providing false information is included at the end of the form, the notice that “ICE has the discretion and statutory authorization to pay for information and/or evidence that is used in support of criminal investigations” is placed prominently at the beginning of the form.

¹³ San Antonio Express-News, *ICE reverses itself and says tip line did receive report of protesters in the Texas House*, (June 1, 2017), <https://www.mysanantonio.com/news/local/article/ICE-reverses-itself-and-says-tip-line-did-receive-11186972.php>

¹⁴ Tae D. Johnson, *Using a Victim-Centered Approach with Noncitizen Crime Victims*, August 10, 2021, <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>.

¹⁵ Alejandro Mayorkas, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, October 12, 2021, https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf

¹⁶ Dept. of Homeland Security, *DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations*, January 13, 2023, <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

¹⁷ Sean Garcia-Leys, Meigan Thompson, and Christyn Richardson, *Mislabeled Allegations of Gang Membership and Their Immigration Consequences*, (April 2016), <https://www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf>

reaching consequences as it is unclear how tips may be investigated and shared with other agencies or law enforcement.

Considering the certainty of harm and manipulation that will be caused by this form, and the lack of any mechanism to safeguard against exploitation, this form does not sufficiently protect individuals' due process rights.

III. The proposed tip form creates non-transparent information-sharing, with no confidentiality protections or limits on how the information is used.

The proposed tip form contemplates that any information submitted through this system may be shared within DHS and with law enforcement at all levels (federal, state, local, tribal, territorial, and foreign). As noted above, there is no information provided on the form about how the information will be vetted before being shared or what parameters are in place to ensure the veracity of the information before it is shared. Further, the form invites members of the public, either within or outside the United States, to potentially manipulate and cause the misappropriation of agency resources. Officials, both within DHS and within various law enforcement agencies at all levels, could waste resources investigating unfounded claims of illegal activity. Further, a recent data breach¹⁸ at ICE raise questions about how secure confidential information transmitted through this form will be protected.

By default, the discretion of whether to act on a tip or to send information to a law enforcement agency lies completely within ICE. Given ICE's well-documented history¹⁹ of abusing discretion to target immigrant populations, the lack of information regarding any vetting procedures or other parameters to be followed before sharing information is concerning. ICE's utilization and sharing of this information could be used in inconsistent ways at best and could result in the direct targeting of specific immigrant populations for discriminatory purposes. This will have disastrous effects on communities of color and other communities that have been historically targeted for enforcement by the federal government. As such, ICE should discontinue the use of this form and method of collecting non-vetted information for enforcement purposes.

IV. Conclusion

The proposed tip form, and the use of anonymous tips by ICE in general, does not provide a system for ICE to collect legitimate and reliable law enforcement information. The tip form will, however, allow for the unjust targeting of immigrant populations in ways that violate legal provisions under VAWA, as well as constitutional protections. ICE's history of discriminatory enforcement practices adds to our concerns about the use of anonymous tips and the problems with the proposed form are insurmountable. The ILRC opposes the use of this form and recommends that ICE abandon its implementation.

¹⁸ Hamed Aleaziz, *ICE accidentally released the identities of 6,252 immigrants who sought protection in the U.S.*, Los Angeles Times, November 30, 2022, <https://www.latimes.com/california/story/2022-11-30/ice-released-names-6252-immigrants-persecution>.

¹⁹ Sharita Gruberg, *ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigrants*, Center for American Progress (Oct. 26, 2016), <https://www.americanprogress.org/article/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>. Ashley Mukpo, *For Black Immigrants, Police and ICE are Two Sides of the Same Coin*, ACLU (Sep. 3, 2020) <https://www.aclu.org/news/criminal-law-reform/for-black-immigrants-police-and-ice-are-two-sides-of-the-same-coin>. Debbie Cenziper, Madison Muller, Monique Beals, Rebecca Holland and Andrew Ba Tran, *Under Trump, ICE aggressively recruited sheriffs as partners to question and detain undocumented immigrants*, Washington Post (Nov. 23, 2021), <https://www.washingtonpost.com/investigations/interactive/2021/trump-ice-sheriffs-immigrants-287g/>

Sincerely,

/s/Elizabeth Taufa

Elizabeth Taufa, Esq.

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